

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN CLINT DRAPER,

Plaintiff,

No. CIV S-02-0716 FCD GGH P

vs.

JEFFREY HARRIS, et al.,

Defendants.

ORDER

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Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court are plaintiff's motions to compel filed December 3, 2004, and February 18, 2005.

Motion to Compel filed December 3, 2004

Plaintiff claims that on October 28, 2004, defendants served plaintiff with a response to his third request for discovery and production of evidence. Plaintiff claims that defendants failed to comply with request nos. 1-13. Plaintiff also claims that on November 8, 2004, defendants failed to provide him with "one copy of statement of District Attorney Report from the District Attorney from Solana County, pertaining to false battery on a peace officer charge written by defendant Harris, on September 23, 2001. Request no. 12."

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1 On December 15, 2004, defendants filed an opposition to plaintiff's motion to
2 compel. Attached as exhibit G is a copy of defendants' October 28, 2004, response to plaintiff's
3 third request for production of documents. Request no. 1 was objected to on grounds that the
4 documents requested were available for inspection in the law library. Request nos. 2, 4-12 were
5 objected to on a variety of grounds, but without waiving objections, documents were provided.
6 Request nos. 3 and 13 were objected to and no documents were provided in response.

7 Plaintiff does not describe how the documents provided were not responsive to his
8 requests. In addition, plaintiff does not claim that the document sought in request no. 1 is not
9 available in the prison law library. Plaintiff also does not address why defendants' objections to
10 his request nos. 3 and 13 were without merit.

11 Because plaintiff has not stated the specific grounds of his complaints regarding
12 defendants' responses to his third request for discovery, the court finds that his motion to compel
13 as to these requests is not well supported. The motion to compel as to these requests is denied.

14 Attached to defendants' opposition as exhibit I is a copy of their response to
15 plaintiff's request for the District Attorney's report. Defendants responded that they diligently
16 searched for the document but could not locate it. In the motion to compel, plaintiff argues that
17 this document exists and refers to an incident report attached to his motion which states that the
18 incident for which plaintiff received a rules violation would be reviewed for consideration for
19 referral to the Solano County District Attorney's Office.

20 The court cannot order defendants to produce a document that they represent
21 cannot be located after a diligent search. On March 11, 2005, plaintiff filed a reply to
22 defendants' oppositions to both of his pending motions to compel. In this document, he appears
23 to claim that he is seeking a copy of the form that prison officials used to refer his case to the
24 District Attorney's Office. The DA referral form is different from the document sought in the
25 instant motion to compel. The document sought in the instant motion appears to be one
26 generated by the District Attorney's Office rather than by prison officials. For these reasons,

1 plaintiff's motion to compel as to this request is denied.

2 February 18, 2005, Motion to Compel

3 In this motion, plaintiff claims the following discovery disputes: 1) defendants
4 refused to produce plaintiff's medical and dental records for 2001-2002; 2) defendants refused to
5 let plaintiff inspect the personnel records of defendant Harris; 3) plaintiff's counselors did not
6 grant plaintiff an adequate opportunity to examine and inspect records regarding the November
7 13, 2001, disciplinary hearing. Plaintiff did not attach to his motion any of the at-issue discovery
8 requests, including defendants' responses.

9 On March 1, 2005, defendants filed an opposition to plaintiff's motion to compel.
10 Defendants state that they are unaware of any request by plaintiff for his medical and dental
11 records for the years 2001 and 2002. Defendants state that they have responded to his request for
12 his medical records from the incident occurring September 16, 2001. Defendants also state that
13 they are unaware of any request by plaintiff for defendant Harris' personnel records. Finally,
14 defendants state that the documents plaintiff's claims he was not allowed adequate time to
15 inspect were actually produced to plaintiff in response to no. 12 of his third request for discovery.

16 Plaintiff cannot compel defendants to produce documents he has not first
17 requested. None of the exhibits attached to plaintiff's March 11, 2005, reply to defendants'
18 opposition demonstrate that these requests were ever made. Plaintiff's claim that he was not
19 granted adequate time to review documents by his counselors appears unrelated to any discovery
20 request. For these reasons, plaintiff's motion to compel is denied.

21 Accordingly, IT IS HEREBY ORDERED that plaintiff's motions to compel filed
22 December 3, 2004, and February 18, 2005, are denied.

23 DATED: 4/20/05

24 /s/ Gregory G. Hollows

25

GREGORY G. HOLLOWS
26 UNITED STATES MAGISTRATE JUDGE

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